

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOHAMADREZA YAZDI, D.D.S.;
RICHARD GUTIERREZ, D.D.S.,
M.S., INC.

Plaintiffs,

vs.

AETNA LIFE & CASUALTY
(BERMUDA) LTD., and DOES 1
through 20, Inclusive

Defendants.

CASE NO. 2:18-cv-08345-CJC (SSx)
Judge: Hon. Cormac J. Carney
Related to: 2:18-cv-08937-CJC (SSx)

Discovery Document: Referred to
Magistrate Judge Suzanne H. Segal

**QUALIFIED PROTECTIVE
ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Health Insurance Portability and Accountability Act of 1996, and for good cause, the Court issues this Qualified Protective Order (the “Order”). Unless modified pursuant to the terms contained in this Order, this Order shall remain in effect through the conclusion of this litigation.

GOOD CAUSE STATEMENT

The parties acknowledge that information produced in discovery, regardless of its designation under this Order, may contain personal and health information (*see, e.g.*, Section 2 *infra*) subject to the protections of, *inter alia*, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the applicable requirements of the Standards for Privacy of Individually Identifiable Health Information and its implementing regulations issued by the U.S. Department of Health and Human Services (45 C.F.R. Parts 160-64; HIPAA Privacy Regulations), and California Civil Code §§ 56 *et seq.*, and 1798.82 *et seq.* (collectively, “Privacy Laws”), which protect the confidentiality of individually identifiable personal and health information. Discovery may also involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted (*see, e.g.*, Section 4 *infra*).

Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled or required to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and to serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so

1 designated without a good faith belief that it has been maintained in a confidential,
2 non-public manner, and there is good cause why it should not be part of the public
3 record of this case.

4 **IT IS THEREFORE ORDERED THAT:**

5 **1. Scope of Protection**

6 This Order shall govern any record of information produced in this action
7 and designated pursuant to this Order, including all designated deposition
8 testimony, all designated testimony taken at a hearing or other proceeding, all
9 designated deposition exhibits, interrogatory answers, admissions, documents and
10 other discovery materials, whether produced informally or in response to
11 interrogatories, requests for admissions, requests for production of documents or
12 other formal methods of discovery.

13 This Order shall also govern any designated record of information produced
14 in this action pursuant to required disclosures under any federal procedural rule or
15 local rule of the Court and any supplementary disclosures thereto.

16 This Order shall apply to the parties and to any nonparty from whom
17 discovery may be sought who desires the protection of this Order.

18 **2. Definitions**

19 The term Confidential Information shall mean confidential or proprietary
20 technical, scientific, financial, business, health, or medical information designated
21 as “CONFIDENTIAL” by the producing party.

22 The term Confidential Health Information shall constitute a subset of
23 Confidential Information, and shall be designated as “CONFIDENTIAL” and
24 subject to all other terms and conditions governing the treatment of Confidential
25 Information. Confidential Health Information shall mean information supplied in
26 any form, or any portion thereof, that identifies an individual or subscriber in any
27 manner and relates to the past, present, or future care, services, or supplies relating
28 to the physical or mental health or condition of such individual or subscriber, the

1 provision of health care to such individual or subscriber, or the past, present, or
2 future payment for the provision of health care to such individual or subscriber.
3 Confidential Health Information shall include, but is not limited to, claim data,
4 claim forms, grievances, appeals, or other documents or records that contain any
5 patient health information required to be kept confidential under any state or
6 federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to
7 HIPPA (*see* 45 C.F.R. §§ 164.501 & 160.103), and the following subscriber,
8 patient, or member identifiers:

- 9 a. names;
- 10 b. all geographic subdivisions smaller than a State, including street
11 address, city, county, precinct, and zip code;
- 12 c. all elements of dates (except year) for dates directly related to an
13 individual, including birth date, admission date, discharge date, age,
14 and date of death;
- 15 d. telephone numbers;
- 16 e. fax numbers;
- 17 f. electronic mail addresses;
- 18 g. social security numbers;
- 19 h. medical record numbers;
- 20 i. health plan beneficiary numbers;
- 21 j. account numbers;
- 22 k. certificate/license numbers;
- 23 l. vehicle identifiers and serial numbers, including license plate
24 numbers;
- 25 m. device identifiers and serial numbers;
- 26 n. web universal resource locators (“URLs”);
- 27 o. internet protocol (“IP”) address numbers;
- 28 p. biometric identifiers, including finger and voice prints;

- 1 q. full face photographic images and any comparable images; and/or
- 2 r. any other unique identifying number, characteristic, or code.

3 The term “Highly Confidential Health Information” shall mean highly
4 sensitive health information that is afforded stronger protections under state and/or
5 federal law than protections under HIPAA, including, but not limited to, genomic
6 information, HIV-related information, information generated by a federally
7 protected alcohol or substance abuse treatment program regulated under 42 C.F.R.
8 Part 2, mental health treatment information, information relating to abortion or
9 reproductive healthcare services or other personal healthcare information. This
10 information may be designated as “CONFIDENTIAL” by the producing party.
11 Without limiting the foregoing, Highly Confidential Information shall constitute a
12 subset of Confidential Information and therefore shall be subject to all other terms
13 and conditions governing the treatment of Confidential Information, regardless of
14 whether it is labeled “CONFIDENTIAL” by the producing Party, and the Parties
15 are expressly authorized and Ordered to produce such information to the extent it is
16 relevant and discoverable. This order shall not be construed to preclude or waive
17 any parties’ written discovery objections to production of such information under
18 the Federal Rules of Civil Procedure.

19 The term “Technical Advisor” shall refer to any person who is not a party to
20 this action or not presently employed by the receiving party or a company affiliated
21 through common ownership, who has been designated by the receiving party to
22 receive another party’s Confidential Information, including Confidential Health
23 Information. Each party’s Technical Advisors shall be limited to such person as, in
24 the judgment of that party’s counsel, are reasonably necessary for development and
25 presentation of that party’s case. These persons include outside experts or
26 consultants retained to provide technical or other expert services such as expert
27 testimony or otherwise assist in trial preparation.

1 **3. Designation of Information**

2 Documents and things produced or furnished during the course of this action
3 shall be designated as containing Confidential Information, including Confidential
4 Health Information, by placing on each page, each document (whether in paper or
5 electronic form), or each thing a legend substantially as follows:

6 CONFIDENTIAL

7 A party may designate information disclosed at a deposition as Confidential
8 Information by either (i) making a statement to that effect on the record in the
9 course of the deposition or, (ii) by sending a letter to all counsel within the time
10 permitted for the review and signing of the deposition by the witness.

11 A producing party shall designate its discovery responses, responses to
12 requests for admission, briefs, memoranda and all other papers sent to the court or
13 to opposing counsel as containing Confidential Information when such papers are
14 served or sent.

15 A party shall designate information disclosed at a hearing or trial as
16 Confidential Information by requesting the court, at the time the information is
17 proffered or adduced, to receive the information only in the presence of those
18 persons designated to receive such information and court personnel, and to
19 designate the transcript appropriately.

20 The parties will use reasonable care to avoid designating any documents or
21 information as Confidential Information that is not entitled to such designation or
22 which is generally available to the public. Where feasible, the parties shall
23 designate only that part of a document or deposition that is Confidential
24 Information, rather than the entire document or deposition.

25 **4. Attorneys' Eyes Only**

26 This case may involve information that is of the most sensitive nature, which
27 would reveal significant technical or business advantages of the producing or
28 designating party or of a non-party, and which includes as a major portion subject

1 matter which is believed to be unknown to the opposing party or parties, or any of
2 the employees of the corporate parties. This information may be designated as
3 “ATTORNEYS’ EYES ONLY” and thus subject to all other terms and conditions
4 governing the treatment of Confidential Information and additional restrictions in
5 paragraph 6.

6 **5. Disclosure and Use of Confidential Information**

7 Information that has been designated Confidential shall be disclosed by the
8 receiving party only to Qualified Recipients. All Qualified Recipients shall hold
9 such information received from the disclosing party in confidence, shall use the
10 information only for purposes of this action and for no other action, shall not use it
11 for any business or other commercial purpose, and shall not disclose it to any
12 person, except as hereinafter provided. All information that has been designated
13 Confidential shall be carefully maintained so as to preclude access by persons who
14 are not qualified to receive such information under the terms of this Order.

15 In the event that any receiving party’s briefs, memoranda, discovery
16 requests, requests for admission or other papers of any kind which are served or
17 filed shall include another party’s Confidential Information, the papers shall be
18 appropriately designated and shall be treated accordingly.

19 All documents, including copies or reproductions, excerpts, summaries,
20 attorney notes, abstracts, or other documents or media that contain or incorporate
21 another party’s Confidential Information shall be handled as if they were
22 designated pursuant to paragraph 3.

23 If Confidential Information is included in any documents, papers or
24 transcripts filed with the Court, the filing party must comply with the procedures
25 for filing documents under seal set forth in Local Rules 79-5, 79-6, and 79-7.

26 If any party or nonparty bound by this Order intends to disclose, discuss, or
27 otherwise refer to any Confidential Information in open court at any hearing or
28 trial, that person must notify the Court and all other parties to this action of its

intention to do so, and must not disclose, discuss, or otherwise refer to the Confidential Information until permitted by the Court.

6. Disclosure and Use of Attorneys' Eyes Only Information

- a. Notwithstanding paragraph 5, all Confidential Information designated as ATTORNEYS' EYES ONLY produced or disclosed by the Parties shall be subject to the following additional restrictions: Confidential Information designated as ATTORNEYS' EYES ONLY shall be disclosed only to the "Qualified Recipients" listed in subparagraphs 7(a), (d), (e), (h), and (i) below, unless otherwise agreed or ordered.
- b. For the purposes of subparagraph 7(a), ATTORNEYS' EYES ONLY Material may not be shown to any member or employee of any law firm or other entity or individual who has been, is currently, or will be in the foreseeable future involved in the negotiation of contracts on behalf of any of the Parties to this Agreement, unless the person authored the document or is identified on the face of the document as a previous recipient.
- c. Additionally, ATTORNEYS' EYES ONLY Material may be shown to persons under subparagraph 6(c) if the witness is an employee of the party who produced the information designated as "Highly Confidential – Attorneys' Eyes Only", if the witness is identified on the face of the document as a previous recipient, or if the party who produced the information as "Highly Confidential – Attorneys' Eyes Only" consents before such designated information is disclosed to the witness.

7. Qualified Recipients

For purposes of this Order, the term Qualified Recipient means

- a. Outside counsel of record for any party in this action, as well as employees of such counsel (excluding experts and investigators)

1 assigned to and necessary to assist such counsel in the preparation and
2 trial of this action;

3 b. Representatives, officers, or employees of a party as necessary to
4 assist outside counsel in the preparation and trial of this action;

5 c. Witnesses who testify by deposition or at trial who, if not a
6 representative, officer, or employee of a party, shall be advised about
7 the terms of this Order and that such Order is applicable to them in
8 connection with their testimony and do not retain copies of
9 Confidential Information;

10 d. Persons who were authors or recipients of the Confidential
11 Information or previously had legal access to Confidential
12 Information;

13 e. Technical Advisors, expert witnesses, or consultants engaged by a
14 party to assist with the preparation and trial of this action provided
15 such expert or consultant agrees in writing, in the form attached at
16 Appendix A, to be bound by the terms of this Order;

17 f. Any designated arbitrator or mediator who is assigned to hear this
18 matter, or who has been selected by the parties, and his or her staff,
19 provided that such individuals agree in writing, in the form attached at
20 Appendix A, to be bound by the terms of this Order;

21 g. Stenographers and videographers engaged to transcribe or record
22 depositions conducted in this action provided that such individuals
23 agree in writing, in the form attached at Appendix A, to be bound by
24 the terms of this Order; and

25 h. The Court and its support personnel; and

26 i. The jury, if any, in the trial of this case.

27 **8. Nonparties**

28 Any nonparty who produces documents or other information in response to

1 discovery requests or subpoenas in this litigation shall be entitled to the benefits
2 and protections of this Order and shall be entitled to seek additional protections as
3 permitted by law.

4 The parties agree that they will treat Confidential Information produced by
5 nonparties according to the terms of this Order.

6 Nonparties may challenge the confidentiality of Confidential Information by
7 filing a motion to intervene and a motion to de-designate.

8 **9. Inadvertent Failure to Designate**

9 The inadvertent, unintentional, or *in camera* disclosure of Confidential
10 Information shall not be deemed a waiver in whole or in part of any party's claims
11 of confidentiality. In the event that a producing party inadvertently fails to
12 designate any of its information pursuant to paragraph 3, it may later designate by
13 notifying the receiving parties in writing. The receiving parties shall take
14 reasonable steps to see that the information is thereafter treated in accordance with
15 the designation.

16 It shall be understood however, that no person or party shall incur any
17 liability hereunder with respect to disclosure that occurred prior to receipt of
18 written notice of a belated designation.

19 **10. Inadvertent Disclosure**

20 In the event of an inadvertent disclosure of another party's Confidential
21 Information to a non-Qualified Recipient, the party making the inadvertent
22 disclosure shall promptly upon learning of the disclosure: (i) notify the person to
23 whom the disclosure was made that it contains Confidential Information subject to
24 this Order; (ii) make all reasonable efforts to preclude dissemination or use of the
25 Confidential Information by the person to whom disclosure was inadvertently
26 made including, but not limited to, obtaining all copies of such materials from the
27 non-Qualified Recipient; and (iii) notify the producing party of the identity of the
28 person to whom the disclosure was made, the circumstances surrounding the

1 disclosure, and the steps taken to ensure against the dissemination or use of the
2 information.

3 Where a party has inadvertently produced a document which that party later
4 claims should not have been produced because of privilege, that party may at any
5 time require the return of any such document. A request for the return of any such
6 document shall identify the document by Bates number and the basis for asserting
7 that the specific document (or portions thereof) is subject to the attorney-client
8 privilege, the work product doctrine, or any other applicable privilege or immunity
9 from discovery, the basis for asserting that the production was inadvertent, and the
10 date of discovery that there had been an inadvertent production. The inadvertent
11 production of any document which a party later claims should not have been
12 produced because of a privilege will not be deemed to be a waiver of any privilege
13 to which that party would have been entitled had the privileged document not
14 inadvertently been produced. If a party requests the return, pursuant to this
15 paragraph, of any such document from another party, the party to whom the
16 request is made shall within thirty (30) days return to the producing party all copies
17 of the document within its possession, custody, or control, including all copies in
18 the possession of experts, consultants, or others to whom the document was
19 provided. In the event that only portions of the document contain privileged subject
20 matter, the producing party shall substitute a redacted version of the document at
21 the time of making the request for the return of the privileged document.

22 **11. Challenge to Designation**

23 Any challenge to the designation or disclosure of Confidential Information
24 must occur by the discovery motion cutoff set forth in the Court's Scheduling
25 Order.

26 At any time after the delivery of Confidential Information, counsel for the
27 party receiving the Confidential Information may challenge the designation of all
28 or any portion thereof by providing written notice thereof (the "Designation

1 Objections”) to counsel for the party disclosing or producing the Confidential
2 Information (the “Designating Party”). The Designation Objections must specify
3 the particular documents, testimony or information to which each challenge
4 pertains, and the specific reasons and support for such challenge.

5 If the parties do not reach a resolution within two (2) weeks from receipt of
6 the Designation Objections (through, for example, the use of alternate documents,
7 testimony, or information, redaction of the items, or de-designation of the items),
8 the Designating Party shall have thirty (30) days from the end of that period to seek
9 Court intervention by initiating the Joint Stipulation procedure set forth in Local
10 Rule 37. If the Designating Party fails to timely initiate the Joint Stipulation
11 procedure, then such documents, testimony or information shall be de-designated
12 in accordance with the Designation Objections applicable to such material.

13 The Designating Party shall be deemed the “moving party” for purposes of
14 compliance with Local Rule 37. The Designating Party shall have the burden on
15 any such motion of establishing the applicability of its confidentiality designation.
16 If the parties wish to file the Joint Stipulation required by Local Rule 37 under
17 seal, the parties may file a stipulation to that effect, or the Designating Party may
18 file an ex parte application making the appropriate request. The parties must set
19 forth good cause in the stipulation or ex parte application as to why the Joint
20 Stipulation or portions thereof should be filed under seal. In the event that any
21 Designation Objection is not addressed by the Designating Party in the Joint
22 Stipulation, then such documents, testimony or information shall be de-designated
23 in accordance with the Designation Objection applicable to such material.

24 Confidential Information is entitled to confidential treatment pursuant to the
25 terms of this Order until and unless the parties formally agree in writing to the
26 contrary, a party fails to timely invoke the Joint Stipulation procedure, or a
27 contrary determination is made by the Court as to whether all or a portion of
28 designated Confidential Information is entitled to confidential treatment.

1 **12. Duration**

2 Once a case proceeds to trial, all of the information that was previously
3 designated as Confidential Information and/or kept and maintained pursuant to the
4 terms of this protective order becomes public and will be presumptively available
5 to all members of the public, including the press, unless compelling reasons
6 supported by specific factual findings to proceed otherwise are made to the District
7 Judge in advance of the trial. See, e.g., Hagestad v. Tragesser, 49 F.3d 1430, 1434
8 (9th Cir. 1995); San Jose Mercury News, Inc. v. U.S. District Court – Northern
9 District, 187 F.3d 1096, 1102 (9th Cir. 1999); Kamakana v. City and County of
10 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
11 showing for sealing documents produced in discovery and attached to non-
12 dispositive motions from “compelling reasons” standard when merits-related
13 documents are part of the judicial record). Accordingly, the terms of this
14 protective order do not extend beyond the commencement of trial.

15 **13. Conclusion of Action**

16 Within sixty (60) days of final termination of this action, including through
17 all appeals, or sooner if so ordered by the Court, each party or other person subject
18 to the terms hereof shall be under an obligation to destroy or return to the
19 producing party all materials and documents containing Confidential Information
20 and to certify to the producing party such destruction or return, except that counsel
21 for each party may maintain in its files, in continuing compliance with the terms of
22 this Order, all attorney work product, all attorney-client communications, one copy
23 of each set of discovery requests and corresponding responses, one copy of each
24 pleading filed with the Court, and one copy of each deposition transcript together
25 with the exhibits marked at the deposition.

26 Return or destruction of designated materials shall not relieve the parties or
27 persons subject to the terms of this Order from any of the continuing obligations
28 imposed upon them by this Order.

1 **14. Jurisdiction to Enforce Protective Order**

2 After the termination of this action, the Court will continue to have
3 jurisdiction to enforce this Order.

4 **15. Modification of Protective Order**

5 This Order is without prejudice to the right of any person or entity to seek a
6 modification of this Order at any time either through stipulation or Order of the
7 Court.

8 **16. Confidentiality of Party's Own Documents**

9 Nothing herein shall affect the right of the Designating Party to disclose to
10 its officers, directors, employees, attorneys, consultants or experts, or to any other
11 person, its own information. Such disclosure shall not waive the protections of this
12 Protective Order and shall not entitle other parties or their attorneys to disclose
13 such information in violation of it, unless by such disclosure of the Designating
14 Party the information becomes public knowledge. Similarly, the Protective Order
15 shall not preclude a party from showing its own information, including its own
16 information that is filed under seal by a party, to its officers, directors, employees,
17 attorneys, consultants or experts, or to any other person.

18 **17. Compulsory Disclosure to Third Parties**

19 If any receiving party is subpoenaed in another action or proceeding or
20 served with a document or testimony demand or a court order, and such subpoena
21 or demand or court order seeks Confidential Information, including Confidential
22 Health Information of a producing party, the receiving party shall give prompt
23 written notice to counsel for the producing party to allow the producing party an
24 opportunity to oppose such subpoena or demand or court order prior to the
25 deadline for complying with the subpoena or demand or court order. The notice
26 shall identify the Confidential Information sought, the date set for the production
27 of such subpoenaed information and, unless prohibited by applicable law, a copy
28 of the subpoena or other compulsory process so that the Designating Party may

1 take such action as it deems fit to control dissemination of the Confidential
2 Information. If an application for a protective order is made promptly and before
3 the date for production, the party shall not produce such Confidential Information
4 prior to receiving the court order or the consent of the Designating Party.

5 In the event that Confidential Information is produced to a non-party to this
6 Order, the producing party shall provide the non-party with a copy of this Order,
7 prior to producing the Confidential Information, and require that the non-party sign
8 the form attached at Appendix A, acknowledging his or her agreement to be bound
9 by the terms of this Order; and that material shall still be treated as Confidential
10 Information by the parties to this Order. No compulsory disclosure to third parties
11 of information or material exchanged under this Order shall be deemed a waiver of
12 any claim of confidentiality, except as expressly found by a court or judicial
13 authority of competent jurisdiction.

14 **18. Binding Effect**

15 This Order shall be binding upon the parties and their attorneys, successors,
16 executors, personal representatives, administrators, heirs, legal representatives,
17 assigns, subsidiaries, divisions, employees, agents, independent contractors, or
18 other persons or organizations over which they have control.

19 **IT IS SO ORDERED.**

20
21 DATED: 3/25/19

/s/ Suzanne H. Segal
HON. SUZANNE H. SEGAL
United States Magistrate Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOHAMADREZA YAZDI, D.D.S.;
RICHARD GUTIERREZ, D.D.S.,
M.S., INC.

Plaintiffs,

vs.

AETNA LIFE & CASUALTY
(BERMUDA) LTD., and DOES 1
through 20, Inclusive

Defendants.

CASE NO. 2:18-cv-08345-CJC (SSx)
Judge: Hon. Cormac J. Carney
Related to: 2:18-cv-08937-CJC (SSx)

**APPENDIX A – PROTECTIVE
ORDER UNDERTAKING**

I, _____, declare that:

1. My address is _____. My
current employer is _____. My current
occupation is _____.

2. I have received a copy of the Qualified Protective Order in this action.
I have carefully read and understand the provisions of the Qualified Protective
Order.

3. I will comply with all of the provisions of the Qualified Protective
Order and agree to be bound by the Qualified Protective Order. I will hold in

1 confidence, will not disclose to anyone not qualified under the Qualified Protective
2 Order, and will use only for purposes of this action any Confidential Information
3 or information designated as “Confidential” that is disclosed to me.

4 4. Promptly upon termination of the relevant action, I will either return
5 in full to the outside counsel for the party by whom I am employed or completely
6 destroy all documents and things designated as “Confidential” that came into my
7 possession, and all documents and things that I have prepared relating thereto.

8 5. I understand that the obligations of this undertaking and the provisions
9 of the Qualified Protective Order continue past the termination of the action.

10 6. I hereby submit to the jurisdiction of this Court for the purpose of
11 enforcement of the Qualified Protective Order in this action.

12 I declare under penalty of perjury that the foregoing is true and correct.

13
14 Signature _____

15 Date _____